Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
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	)	

REPLY COMMENTS OF VERIZON

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Introduction

The Commission should not continue to require service providers to indemnify the schools and libraries fund for amounts that the Universal Service Administrative Company ("USAC" or "Administrator") mistakenly approved for disbursement to the applicant due to the errors or wrongdoing of another. Particularly when the applicant received the e-rate funds because of its own errors or wrongdoing, or when the service provider has stepped in as a "Good Samaritan" to forward e-rate payments to the applicant for services that have been provided by another vendor, it is unfair for the Administrator to go after the service provider to reimburse the fund for these losses. In addition, the Commission should waive rules so that service providers are not forced to request that applicants repay e-rate funds that they would have properly received but for a technicality. It also should require USAC to set time limits, similar to statutes of limitations, beyond which USAC will not seek to recover funds disbursed in error. The time limits could be varied, and longer times could be allowed to recover funds disbursed due to serious or intentional violations of the program rules.

The Commission should reject additional suggestions that would add unnecessary administrative burdens, or lead to further waste, fraud and abuse of e-rate funds. The Commission also should reject Fibertech's suggestion to impose a "registration fee" on

service provides, which is nothing more than a proposed tax that would effectively penalize providers for participating in the e-rate program.

I. The Commission Should Not Require Service Providers To Reimburse USAC For Funds Disbursed to the Applicant, And It Should Waive Technical Rule Violations And Forgo Repayment After A Certain Period

As the Commission recently reaffirmed, although e-rate funds "flow to the applicant *through* the service provider," any funds that are "disbursed" to the service provider must be promptly given to the applicant.[1] Thus, even though the service provider is a conduit for any award, it is the applicant, rather than the service provider, that receives the direct benefit of e-rate funds.[2]

Nevertheless, as Sprint has pointed out, if USAC determines that funds have been disbursed to the applicant in error, it "recovers erroneously disbursed funds from the service provider, not the applicant, no matter what the cause of the erroneous disbursement." Sprint Comments, at 5.[3] When the Administrator determines that a discount was improper only after the funds have been given to the applicant, it should

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[1] *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, ¶¶ 42-51 (2003) ("Second Report and Order and FNPRM").

[2] There are two potential ways to give the e-rate discount to the applicant. Under the Billed Entity Applicant Reimbursement ("BEAR") process, the applicant pays in full for the provider's services, and then receives a check to pay for the portion of the services discounted by e-rate. Although USAC sends the BEAR check to the service provider, the Commission requires the provider to forward this payment to the applicant within twenty days of receipt. Second Report and Order and FNPRM, ¶¶ 51. When the applicant chooses discounted billing, the service provider must bill the applicant for only the non-discounted portion of services rendered, with the Administrator paying for the discounted portion. *Id.*, ¶¶ 42, 46-50.

[3] *See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc, Federal-State Joint Board on Universal Service*, Order, CC Docket Nos.97-21, 96-45, 15 FCC Rcd 22975, ¶¶ 9-12 ("COMAD Order").

look to the applicant for any repayment. Unless the service provider was to blame for the erroneous disbursement, it should not be required to indemnify the Administrator for this loss of e-rate funds. When USAC requires the service provider to compensate the fund for losses due to e-rate funds or discounts that have already been disbursed to the applicant, the service provider must either attempt to recover the funds from the applicant (which is usually difficult, if not impossible, to do), or suffer the loss associated with the repaid funds. The rules therefore often unfairly punish the service provider for the mistakes of the applicant (or USAC), and give the applicant a windfall of an e-rate discount to which it was not entitled.

The problem is compounded when, as often happens, USAC's request for reimbursement of previously disbursed funds comes years after the funds (or associated discounts) have been given to the applicant. For example, Verizon recently received a letter from USAC dated April 2, 2003, requesting the return of e-rate funds that were approved in the 1999-2000 funding year and disbursed to the applicant in October 2000. When USAC's request for repayment comes so long after funds have been disbursed, it is difficult for the service provider to seek reimbursement from the applicant for the portion of the service price that the applicant previously had been told would be paid by USAC.

When the USAC request for repayment comes after funds have been disbursed to the applicant, the Commission should waive rules that would require repayment of e-rate funds if the money would have been properly disbursed but for a technical violation of the rules. The Commission has the authority to waive non-statutory requirements, and it

found good cause to waive these types of rules in the first year of the e-rate program.[4] Granting waivers in such limited circumstances would still preserve the incentives for applicants and providers to abide by the rules, so that their applications to USAC are not rejected. However, it would avoid penalizing them for innocent mistakes that are only discovered after the fact.

In addition, the Commission should require USAC to develop periods beyond which it will not seek recovery of previously disbursed funds, similar to statutes of limitations that exist in the legal realm. For example, USAC could set a time limit of 12 to 24 months after funds have been disbursed as the outside time in which it would seek repayment for funds that were erroneously disbursed due to minor violations. More serious violations, such as deliberate fraud, would warrant longer periods. Setting such time periods would provide applicants and service providers with certainty in the process, which will help them with budgeting for expenses.

At a minimum, the Commission should not require service providers to indemnify USAC against losses due to the wrongdoing of another. In originally adopting USAC's proposed plan for recovering erroneously disbursed funds, the Commission recognized that there should be different recovery mechanisms when the payment was the result of the deliberate wrongdoing of an applicant. Thus, the Commission "emphasize[d] that the proposed recovery plan is not intended to cover the rare cases in which the Commission has determined that a school or library has engaged in waste, fraud, or abuse. The

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[4] *Changes to the Board of Directors of the National Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Order, CC Docket Nos. 97-21, 96-45, 15 FCC Rcd 7197 (1999).

Commission will address those situations on a case-by-case basis." COMAD Order, ¶ 13.

Rather than waiting on a case-by-case basis, the Commission should specify that, in cases in which USAC finds that the applicant engaged in waste, fraud, or abuse of e-rate funds, USAC should attempt to recover the funds directly from the applicant, rather than going through the service provider. As Sprint argued, this should certainly be done in the case where an applicant is found to have committed a violation that warrants disbarment. Sprint Comments, at 5-6. However, it should not be limited to only those cases that rise to the level of disbarment. A rule requiring the applicant to pay for funds that it received due to its own waste, fraud, or abuse would deter applicant wrongdoing, by providing a realistic threat of having to repay the erroneously disbursed funds. In addition, because disbarment could take a long time, requiring the applicant to pay when the wrongdoing is discovered, rather than at the end of the disbarment process, would facilitate quicker recovery of the funds. And, as stated above, this rule would be more equitable than the default process, which punishes the service provider by requiring it to compensate USAC for losses due to the applicant's wrongdoing.

The Commission also should specify that "Good Samaritan" service providers are not liable for reimbursing the program for funds that have been disbursed to the applicant or another, when such disbursements are related to the services of prior vendors. A "Good Samaritan" is a service provider that steps in, at the request of the applicant, to replace an e-rate vendor that is no longer participating in the program. In this situation, the "Good Samaritan" often is merely a conduit of the funds from USAC to the applicant. As such, the Schools and Libraries Division Task Force on Waste, Fraud, and Abuse

recommends that it be exempted from reimbursing USAC for improperly disbursed e-rate funds associated with "the period of time before it assumed the role of Good Samaritan for a particular applicant. Any [reimbursement] issues that arise prior to this date should remain the responsibility of the original service provider and the applicant."[5] As the Task Force reasoned, such a policy would "make service providers more willing to step into that [Good Samaritan] role and reduce the potential for waste when an E-rate vendor can no longer participate in the program." *Id.* In addition, it avoids penalizing the service provider for problems that are beyond its power to control, or requiring the provider to pay USAC for e-rate funds that have been distributed to another.[6]

II. The Commission Should Reject the Continued Attempts to Revisit the Alaska Decision, or Other Expansions of the Program Criteria

The statute requires that e-rate funds be used only for "educational purposes." 47 U.S.C. § 254(h)(1)(B). The Commission rules require an applicant to certify that the "services requested will be used *solely* for educational purposes." 47 C.F.R. § 54.504(b)(2)(ii) (emphasis added). The Commission previously granted a limited waiver of its rules for the State of Alaska, to allow "members of rural remote communities in Alaska that lack local or toll-free dial-up access to the Internet to use excess service obtained through the support mechanism, when the services are not in use

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[5] USAC, Update on Task Force on the Prevention of Waste, Fraud and Abuse: Meeting #3, *available at* http://www.sl.universalservice.org/taskforce/update3.asp.

[6] For example, although not required by the rules, when Verizon is the initial service provider, it performs a review of the customer's accounts before signing the applicant's reimbursement forms. However, when Verizon steps in as a Good Samaritan to replace another service provider, it generally does not have access to all of the previous billing records, or data on the services that have been provided.

by the schools and libraries."[7] However, it recently clarified that services would be deemed for educational purposes only under limited circumstances. *See* Report and Order and FNPRM, ¶ 17. It also clarified that nothing in the order should be interpreted as an expansion of the Alaska waiver to broader situations. *Id.*, ¶ 18.

The Illinois State Board asks the Commission to "revisit" the Alaska decision, and proposes that " 'non-traditional' schools and non-profit educational entities that assist educational entities in these areas be considered eligible to use 'excess services' obtained through the program." Illinois State Board Comments, at 10. The Commission should reject this suggestion. As Verizon argued in initial comments on this issue, broadening the rules to allow such an expansive use of e-rate services would violate the Act, skew competition in a nascent broadband market, and create perverse incentives for providers and applicants to over-request funds from a limited pool. Allowing e-rate funding to be used for such purposes would creates incentives for providers and applicants to ask for more service and products than they require, in order to provide – with universal service subsidized dollars – services for the entire community.[8] The waiver offered to Alaska was based on a combination of unique circumstances that are unlikely to apply to any other area. It should not be the basis for a rule change that would create an overbroad and anti-competitive expansion of the e-rate program.

The Commission also should reject other suggestions to expand the use of e-rate funds to support services that are not related to "educational purposes." For example, it

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[7] Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, ¶ 18 (2003) ("FNPRM" or "Report and Order and FNPRM").

[8] Verizon Comments, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, at 2-7 (filed April 5, 2002).

should reject the Illinois State Board of Education recommendation to provide support for "safety-related" telecommunications services, such as E-911 circuits, wireless services used by non-teaching personnel, and support to professional staff development. Illinois State Board of Education Comments, at 9. It would unlawfully expand the scope of the fund that is expressly limited to services provided "for educational purposes." 47 U.S.C. § 254(h)(1)(B). In addition, demand for Schools and Libraries support already exceeds the funds available, and broadening support to these services would dilute support for services that are more closely targeted to meet the "educational purposes" requirement.

III. The Commission Should Reject Comtec's Suggestion To Fund the Purchase and Installation of Permanent Infrastructure, Such As Fiber Backbone Networks, As It Would Lead to Significant Waste of Universal Service Funds

Comtec argues that the Commission should give schools and libraries the "complete freedom to choose the service that best fits their needs" by providing e-rate funding for the "purchase and installation of permanent infrastructure," such as their own fiber backbone networks. Comtec Comments, at 1-2. This is ridiculous. This self-serving suggestion would only exacerbate the problems of waste, fraud and abuse that have plagued the funding of internal connections, and would put a serious drain on e-rate funds available to other applicants.

Several commenters have expressed concern about the waste of funds associated with internal connections, especially for high-discount applicants. As one commenter noted, "[o]ften such requests include items such as excessive or overly elaborate maintenance agreements or 'help desks' which go far beyond basic network maintenance; 'super sized and super priced' routers, servers and switches; and fiber cabling where CAT 5/6 is more than sufficient." Comments of the Illinois State Board of Education, at 25.

Comtec's filing already hints that such abuses would be magnified through its proposal to allow the purchase of permanent external infrastructure. It argues that providers should be able to seek to sell applicants their own "fiber backbone networks," and "increased bandwidth." Comtec Comments, at 1-2.

Even if applicants and service providers did not "supersize" or otherwise engage in wasteful spending through these purchase packages, it would put a significant drain on e-rate funds. Like the suggestion to expand the limited waiver the Commission gave Alaska for "excess services," allowing applicants to purchase their own backbone networks would create incentives for them to over-invest in more than they need, since the majority of the investment would be funded by e-rate dollars, and thus "free" to the applicant. As stated above, under the existing rules, for internal connection investments, there already are concerns being raised that some applicants are purchasing more capacity than they need for purely educational purposes.

Comtec's suggestion is that, in the long run, applicants may receive a "better return for their investment" by purchasing rather than leasing. Comtec Comments, at 2. However, Comtec's comments suggest that the "long run" may be as long as the forty-year life of fiber optic cable. *Id.* Especially because demand already exceeds the amount of e-rate funds available, the fund simply cannot afford to support applicants' purchase of networks in the speculative hopes that some of those purchases may, over decades of use, result in a "better return for their investment."

IV. The Commission Should Reject Fibertech's Suggested "Registration Fee," Which Would Penalize Service Providers And Discourage Them From Participating In the E-Rate Program

Fibertech argues that the Commission could increase the size of the schools and libraries fund by charging a "registration fee" to service providers. Under Fibertech's proposal, service providers would be assessed a "fee" based on a percentage of funds "awarded" by USAC, such as one half of 1% of the funding received per fiscal year. Fibertech Comments, at 4. While Fibertech concedes that "there is always reluctance to impose additional taxes or fees," it argues that the Commission could use the money generated from the "registration fees" to pay for audits or other expenses of administering the program. *Id.*, at 4-5. This proposal should be categorically rejected, as it would discourage service providers from participating in the e-rate program.

Fibertech's suggestion that service providers should give USAC a portion of the funds "awarded" fails to recognize that the funds "awarded" under the program belong to the applicant, not the provider. As the Commission recently clarified, when service providers receive BEAR disbursement checks from USAC, they must pass them on to the applicant within 20 days of receipt. Second Report and Order and FNPRM, ¶ 51. Likewise, any funds the service provider receives through the discounted billing process are to compensate for discounts the provider has already given the applicant. *Id.*, ¶¶ 42, 46-50. Thus, under Fibertech's "registration fee" proposal, many service providers would lose more than they gain from participating in the e-rate program. Not only is this patently unfair, but it raises the significant possibility of discouraging providers from participating. This would lead to fewer options for applicants seeking e-rate services.

In addition, this proposal would almost certainly lead to increased charges to the

applicant. Providers likely would either raise prices in order to recover these "fees," or would fail to bid on applicant requests for proposal, which would lead to less competitive packages being available. The USAC budget already allocates sufficient funds to pay for audits and administrative fees. These funds currently are collected from all interstate telecommunications carriers, and thus the costs are distributed among a broad base of contributors. There is no need to add a "registration fee" on top of the universal service funds already collected, and doing so would have the unintended result of hurting participation in the e-rate program.

V. The Commission Should Reject the Suggestion That Applicants Be Allowed To Review and Approve the Service Provider Invoice Form 474 Before It Is Submitted to USAC

One commenter argues that the Commission should "require vendors to obtain signoff from the applicant prior to submission of the Form 474 – Service Provider Invoice Form (SPIF) – for non-recurring services." Illinois State Board of Education Comments, at 31. The stated purpose of such approval is that, "[b]y requiring applicant signoff, the school/district has the opportunity to review vendor invoices to ensure accuracy and compliance prior to submission to USAC and prior to having funds disbursed to the vendor." *Id.*, at 32. This suggestion should be rejected, because it would unnecessarily slow down payments to service providers who have provided services to the applicant.

The Illinois State Board of Education comments state that the Commission requires the applicant to obtain approval from the service provider before submitting forms for repayment through the BEAR process. *Id.* However, in that case, both the applicant and service provider have the incentive to timely review and approve the forms.

In a situation where the applicant has already received discounted services from the vendor, and is not ordering recurring services from that vendor, the applicant has already received the benefit of the e-rate discount through lower rates. In that instance, it has no incentive to ensure that the provider is compensated by USAC for the difference between the full price of services rendered and the discounted rate given to the applicant.

The commenter nevertheless argues that such a rule is necessary, because it is aware of "at least two cases" where a provider submitted the Service Provider Invoice form to obtain reimbursement, even though, at the time the form was submitted, "the work was nowhere near completed." *Id.*, at 31-32. The instructions for completing the form already state that the service provider generally cannot submit this invoice until after work has been completed. The instructions also include a section describing the possible penalties for non-compliance. USAC, through its normal invoice review and audit processes, should be able to prevent or address any situations where service providers attempt to file the forms prematurely. It should investigate specific instances of potential non-compliance with these instructions, such as those addressed by the commenter, and act accordingly to address those limited violations of the rules. However, it should not adopt a burdensome process for applicant review that would apply to all applications.

If USAC believes additional actions are warranted to protect against early filing, it could revise the Service Provider Invoice Form 474 to require service providers to certify, under penalty of perjury, compliance with USAC's instructions. Or it could notify the applicant when the form is submitted, which would allow the applicant to alert USAC if it believes that the invoice has been submitted prematurely. This would allow

applicants who are aware of problems or wish to monitor the filing of the Form 474 to do so, but would not burden the majority of applicants with the extra responsibility of reviewing another form. Particularly when the Commission is working to streamline the process, it should not require another hoop for the service provider to go through to get payment, or more paperwork for the applicant to review. The potential abuses of a few providers who do not comply with the Form 474 instructions are not sufficient reason to slow down the entire application process.

VI. The Commission Should Not Require Special Treatment of Certain Categories of Applicants, But Should Leave the Process Up to USAC

Some commenters have argued that USAC should give priority to certain categories of applications. For example, the National Association of State Telecom Directors argues that USAC should "consider treating state network applications as a special category." NASTD Comments, at 10. StateNets argues that a "large application review team" be established by USAC to review and expedite these applications. StateNets Comments, at 2-3. Similarly, the American Library Association urges that a special unit be established to process "large-dollar and/or complex consortia applications." ALA Comments, at 5.

As these commenters appear to acknowledge, any determination of priorities of application processing should be made by USAC, not through changes in Commission rules. Priorities can change over time, as can the mix of applications received. Setting prioritization rules that could only be changed through additional rulemaking proceedings would not allow SLD the flexibility to timely respond to such changes. The Commission should continue to allow USAC, which has the experience processing these applications, the flexibility and discretion to implement the processes it determines are best able to

process them in a timely manner.[9]

Conclusion

The Commission should not continue to require service providers to indemnify USAC for funds that have been disbursed to the applicant due to the error or wrongdoing of another. It also should waive application of technical rule requirements, and require USAC to set time limits for recovery of previously disbursed funds. The Commission should reject additional suggestions that would add unnecessary administrative burdens or costs, or lead to further waste, fraud and abuse of e-rate funds.

Respectfully submitted,

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[9] USAC has recently proposed budget increases, in part to pay for permanent employees to its Program Integrity Assurance ("PIA") staff. *See* Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections For The Fourth Quarter 2003, at 4 (2003). This is one of the changes commenters have suggested would assist program administration. *See* StateNets Comments, at 3-4 ("Temporary PIA reviewers create a constant cycle of training and retraining employees. A more stable work force is important for reducing waste in program administration and, more importantly, the hidden waste of applicant resources.").